

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Reserved on:- May 11, 2023

Pronounced on:- July 03, 2023

1. CRM-M-1055-2016(O&M)
Gazal ChadhaPetitioner

vs.

Rajpal BansalRespondent

2. CRM-M-1894-2016 (O&M)
Gazal ChadhaPetitioner

vs.

M/s Raj Soap & Detergents(P) Ltd.Respondent

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Rakesh Bhatia, Advocate, for the petitioner.

Mr. Sandeep Goyal, Advocate and
Ms. Vidisha Swarup, Advocate, for respondent.

HARKESH MANUJA J.

1. This order of mine shall dispose of two petitions under Section 482 Cr.P.C, for quashing of complaints filed under Negotiable Instrument Act, 1881 (hereinafter referred as NI Act), summoning orders as well as the subsequent proceedings arising therefrom. While in CRM-M-1055-2016, the subject matter i.e. complaint No. 8495 dated 27.11.2015 along with summoning order dated 30.11.2015; whereas in CRM-M-1894-2016 it is complaint No. 8497 dated 27.11.2015, besides the summoning order dated 30.11.2015.

2. Facts giving rise to the abovesaid complaints are similar and have been taken from CRM-M-1055-2016 involving complaint No. 8495 dated 27.11.2015, tilted as “**Rajpal Bansal Vs. M/s Chadha Motors and others**”. In the complaint, it has been alleged that accused no.1 is a

partnership concern and accused nos.2 to 5 are the partners who are actively participating in its affairs being responsible for all acts and conduct of business of the same on day to day basis; accused nos.2 to 5 being known to the complainant approached him in the month of April 2014 and represented that because of recession and down fall in the sale of cars, they were in dire need of financial assistance. Induced by the representations made by the accused, the complainant released a sum of Rs. 7,00,000/- and on insistent demands about its return, the accused issued cheque no. 205503 dated 20.10.2015 in order to discharge the legally enforceable liability.

3. The above said cheque when presented was returned unpaid by the bank with the remarks "Funds Insufficient"; despite receipt of the demand notice dated 29.10.2015, the accused failed to make the payment resulting into filing of complaint dated 27.11.2015, under Section 138 of the Negotiable Instruments Act, 1881, before JMIC, Ludhiana followed by summoning order dated 30.11.2015. Similarly, in CRM-M-1894-2016, complaint No.8497 dated 27.11.2015, tilted as **M/s Raj Soap & Detergents Pvt.Ltd. Vs. Chadha Motors and ors.**", relates to cheque no 206424 dated 20.20.2015 for Rs 40,00,000/-, presented for encashment on 08.10.2015 which was returned unpaid on 21.10.2015 with the remarks "Funds Insufficient".

4. Learned counsel for the petitioner submits that at the relevant point in time, the petitioner happened to be a student and whenever the father of the petitioner was to go abroad for business dealings, she used to appoint her as authorized signatory. Learned counsel further submits that the petitioner was merely a signatory to the cheques and not a

partner in the firm as alleged by the complainant/ respondent. He further submits that the averments were also incomplete as to how the petitioner was incharge and responsible for the act and conduct of the firm, specifically under the circumstance when she was not a partner and merely a signatory on few of the cheques issued by the partnership firm. Another argument which has been professed is that from the contents of the complaints, it can be figured out that the respondent/ complainant was doing the business of money lending to the public at large, however, as it was not a registered money lender, thus, in view of Section 3 of the Punjab Registration of Money Lenders Act, 1938 complaint filed on its behalf was not maintainable.

5. On the other hand, learned counsel for respondents submits that the petitioner being drawee of the cheques on account of being authorized signatory was actively involved in the affairs of the firm and even otherwise, there were categoric averments in the complaint to this effect, thus responsible for the act and conduct of its business. It has been further submitted that the petitioner was made authorized signatory for the cheques on 20.12.2013 by Mr. Sumesh Chadha who was the Managing Director of the partnership firm; whereas the authorization was withdrawn in December 2015, while the cheques in question were issued in October 2015, and therefore, she being the authorized signatory at the relevant period in time, cannot escape the liability. With respect to money lending, it has been submitted that the complainant is not involved in lending money to the public at large and in any case it is a disputed question of fact which can be proved only during trial and on this account complaint and summoning order cannot be quashed.

6. I have heard learned counsel for the parties and gone through the paper book. I find substance in the submissions made on behalf of the petitioner. At the outset, it would be relevant to point out here that in CRM-M-1894-2016 with respect to cheque no 206424 dated 20.20.2015 for Rs 40,00,000/-, it is admitted position that the petitioner was not the signatory, while in CRM-M-1055-2016, for the other cheque with no.205503 for Rs.7,00,000/- it was signed by the petitioner as an authorized signatory of the partnership firm. Another relevant point which requires specific mention is that vide CRM-29245-2016 in CRM-M-1894-2016, Annexure P-4 was brought on record through which partnership deed for M/s Chadha Motors and its certificate of registration by Registrar of Firms was brought on record and it being a statutory document, it can also not be disputed by the respondents that the petitioner never remained partner in the firm.

7. For the purpose of adjudication of the present petitions, the primary issue to be determined is “whether the necessary averments were made in the complaints so as to enable the trial Court to invoke its jurisdiction under Section 138 of the Act or not. For this purpose, it would be necessary to have a look at the exposition of law on the point through various authorities by Hon’ble Apex Court. Hon'ble Apex Court in **"S.P.Mani And Mohan Dairy v. Dr. Snehalatha Elangovan"** : Law Finder Doc Id # 2036373 in Criminal Appeal No. 1586 of 2022 decided on 16.9.2022 held that:-

“27. ... Evidently, a person who signs the cheque or who has the authority to sign the cheque for and on behalf of the company, regardless of his office or capacity, can, prima facie, be assumed to be in charge of and

responsible to the company in the conduct of its business. And, where such person is prosecuted, then, if it be his defence that the offence was committed without his or her knowledge or that he or she has exercised all due diligence to prevent the commission of such offence, the burden to prove that would be on him or her and can only be discharged at the stage of evidence."

8. It would also be appropriate to look into the decision of Hon'ble Apex Court in the case of "**K.K. Ahuja v. V.K. Vora**", reported as (2009) 10 SCC 48, wherein while discussing the principles of vicarious liability of the officers of a company in respect of dishonour of a cheque, it was held that-

"27. The position under section 141 of the Act can be summarized thus:

- (i) If the accused is the Managing Director or a Joint Managing Director, it is not necessary to make an averment in the complaint that he is in charge of, and is responsible to the company, for the conduct of the business of the company. It is sufficient if an averment is made that the accused was the Managing Director or Joint Managing Director at the relevant time. This is because the prefix "Managing" to the word "Director" makes it clear that they were incharge of and are responsible to the company, for the conduct of the business of the company.*
- (ii) In the case of a director or an officer of the company who signed the cheque on behalf of the company, there is no need to make a specific averment that he was in charge of and was responsible to the company, for the conduct of the business of the company or make any specific allegation about consent, connivance or negligence. The very fact that the dishonoured cheque was signed by him on behalf of*

the company, would give rise to responsibility under sub-section (2) of Section 141.

- (iii) *In the case of a Director, Secretary or Manager (as defined in Section 2(24) of the Companies Act) or a person referred to in causes (e) and (f) of section 5 of Companies Act, an averment in the complaint that he was in charge of. and was responsible to the company, for the conduct of the business of the company is necessary to bring the case under section 141(1) of the Act. No further averment would be necessary in the complaint, though some particulars will be desirable. They can also be made liable under Section 141(2) by making necessary averments relating to consent and connivance or negligence, in the complaint, to bring the matter under that subsection.*
- (iv) *Other Officers of a company cannot be made liable under sub-section (1) of Section 141. Other officers of a company can be made liable only under sub-section (2) of Section 141, by averring in the complaint their position and duties in the company and their role in regard to the issue and dishonour of the cheque, disclosing consent, connivance or negligence. "Consequently, the petition is allowed. Impugned FIR No.24 dated 09.12.2017, under Section 304-A IPC, registered at Police Station Narot Jaimal Singh, District Pathankot as well as the consequential proceedings arising therefrom, are hereby quashed."*

9. Similarly, in the case of **"Sunita Palita v. M/s Panchami Stone Quarry"**, reported as(2022) SC Online SC 945, Hon'ble Apex Court observed as under:

"When the accused is the Managing Director or a Joint Managing Director of a company, it is not necessary to make an averment in the complaint that he is in charge of, and is responsible to the company for the conduct of the business of the company. This is because the prefix

"Managing" to the word "Director" makes it clear that the Director was in charge of and responsible to the company, for the conduct of the business of the company. A Director or an Officer of the company who signed the cheque renders himself liable in case of dishonour. Other officers of a company can be made liable only under sub-section (2) of section 141 of the NI Act by averring in the complaint, their position and duties, in the company, and their role in regard to the issue and dishonour of the cheque, disclosing consent, connivance or negligence."

10. A conjoint reading of these judgments show that in case of a managing director / partner / signing authority (of cheque) of a firm, it can be presumed under given circumstances that they were actively involved in the affairs of the company/ firm, however, in case of other officers of the company/ firm, it is necessary to aver in the complaint, their position and duties, and also their role with regard to the issue and dishonour of the cheque, disclosing consent, connivance or negligence. Accordingly, if we apply the above principles in the present case, it could be said that in relation to the cheque which the petitioner signed, she could be held vicariously liable though subject to trial; but the same cannot be said in the case where she did not even sign the cheque and there were no specific averments made in the complaint identifying her role towards the act and conduct of the firm.

11. In the end, learned counsel for the respondents-complainant has also relied upon Section 28 of Indian Partnership Act, 1932 to submit that when petitioner has permitted herself to be represented as a partner in the firm and the respondent has acted on such representation, she is

liable as a partner in the firm. For reference, Section 28 of Indian Partnership Act – 1932 is reproduced below:

“Section 28

HOLDING OUT.

(1) Anyone who by words spoken or written or by conduct represent himself, or knowingly permits himself to be represented, to be a partner in a firm, is liable as a partner in that firm to anyone who has on the faith of any such representation given credit to the firm, whether the person representing himself or represented to be a partner does or does not know that the representation has reached the person so giving credit.....”

11. Under the given facts and circumstances, the aforesaid contention is meritless as in **"Dilip Hariramani v. Bank Of Baroda"**: Law Finder Doc Id # 1984977, case bearing Criminal Appeal No. 767 of 2022 decided on 09.05.2022, Hon'ble Apex Court held that Partnership Act, 1932 creates civil liability and vicarious liability in the criminal law in terms of Section 141 of the NI Act cannot be fastened merely because of the civil liability. Relevant para of the same is reproduced here under:

"11. ...The appellant cannot be convicted merely because he was a partner of the firm which had taken the loan or that he stood as a guarantor for such a loan. The Partnership Act, 1932 creates civil liability. Further, the guarantor's liability under the Indian Contract Act, 1872 is a civil liability. The appellant may have civil liability and may also be liable under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. However, vicarious liability in the criminal law in terms of section 141 of the NI Act cannot be fastened because of the civil liability. Vicarious liability under sub-section (1) to section

141 of the NI Act can be pinned when the person is in overall control of the day-to-day business of the company or firm. Vicarious liability under sub-section (2) to section 141 of the NI Act can arise because of the director, manager, secretary, or other officer's personal conduct, functional or transactional role, notwithstanding that the person was not in overall control of the day-to-day business of the company when the offence was committed. Vicarious liability under sub-section (2) is attracted when the offence is committed with the consent, connivance, or is attributable to the neglect on the part of a director, manager, secretary, or other officer of the company."

12. In view of **Dilip's** case (supra) even if the facts alleged in the complaint are taken on face value and it is assumed that petitioner represented herself as partner in the firm, vicarious liability cannot be fastened upon her in this case where she did not sign the cheque, besides there being absence of specific averments in the complaint failing clearly to identifying her role towards the act & conduct of business of the firm.

13. Submission regarding respondent being a money lender without registration, in view of allegations and denial thereof, the same becomes a disputed question of fact and requires to be proved at the stage of trial and on this account alone FIR cannot be quashed.

14. In view of the discussion made hereinabove, **CRM-M-1894-2016** is allowed and complaint 8497 dated 27.11.2015 titled as "M/s Raj Soap & Detergents Pvt. Ltd. Vs. M/s Chadha Motors and ors., alongwith all consequential proceedings including summoning order dated 30.11.2015 passed therein are quashed. While **CRM-M-1055-2016** is

dismissed and the petitioner is, therefore, liable to face trial in complaint No 8495 dated 27.11.2015, titled as “Raj Pal Bansal Vs. M/s Chadha Motors and ors.

15. Pending misc. application(s), if any, shall also stand disposed of.

July 03, 2023
sanjay

(HARKESH MANUJA)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/ No